

Received
July 12, 2011

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Commission on
State Mandates

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JOSEPH E. HOLLAND
COUNTY CLERK, RECORDER AND ASSESSOR

July 12, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Test Claim 10-TC-08 "Post Election Manual Tally-County of Santa Barbara."

Dear Mr. Bohan:

This letter is the County of Santa Barbara's (Claimant's) rebuttal to the Department of Finance letter submitted to the Commission on June 13, 2011.

In its letter, the Department of Finance requested that the Commission on State Mandates (CSM) staff consider whether the regulations "adopt the already-promulgated post election manual tally requirements in close contests pursuant to *County of San Diego v. Debra Bowen* (2008) 166 Cal. App.4th 501", stating that "Should the CSM staff find that to be the case, the emergency regulations would then not impose a reimbursable state mandate on local elections officials within the meaning of Article XIII B, section 6 of the California Constitution because the requirements of the emergency regulations would already be required by the above court case."

In the case cited, the Court of Appeal found that the Post Election Manual Tally (PEMT) requirements fell within the definition of a regulation under California law, and as such were subject to the Administrative Procedures Act (APA). As the Secretary failed to follow the proper procedures of the APA in instituting the requirements, the Court of Appeal found the PEMT requirements void. *County of San Diego*, at 505 and 520.

The findings being such, it is the Claimant's understanding that the PEMT requirements outlined in the emergency regulations for which this test claim was filed, were not required by the court or declared existing law by the court, and therefore are not exempt as a reimbursable mandate under Government Code Section 17566, subdivision (b).

If you have any questions regarding this letter, please contact Renee Bischof, Claimant Representative for the County of Santa Barbara at (805) 696-8953.

Sincerely,

Renee Bischof
Elections Division Manager, County of Santa Barbara

Attachments

Attachment A

DECLARATION OF RENEE BISCHOF
COUNTY OF SANTA BARBARA
CLAIM NO. CSM-10-TC-08

I, the undersigned, declare as follows:

I am currently employed with the County of Santa Barbara, am listed as the claimant contact and representative for this test claim and am authorized to make this declaration on behalf of the claimant, the County of Santa Barbara.

I certify under penalty of perjury that the rebuttal is true and complete to the best of my personal knowledge, information or belief.

This declaration is executed on this 12th day of July, 2011, at Santa Barbara, California.

A handwritten signature in black ink that reads "Renee Bischof". The signature is written in a cursive style and is positioned above a horizontal line.

Renee Bischof
Elections Division Manager
County of Santa Barbara
4440-A Calle Real
Santa Barbara, CA 93110
(805) 696-8957

Attachment B

DECLARATION OF SERVICE BY EMAIL
REBUTTAL BY COUNTY OF SANTA BARBARA TO DEPARTMENT OF FINANCE
LETTER DATED JUNE 13, 2011
CLAIM NO. CSM-10-TC-08

I, the undersigned, declare as follows:

I am currently employed with the County of Santa Barbara, am listed as the claimant contact and representative for this test claim and am authorized to make this declaration on behalf of the claimant, the County of Santa Barbara.

On July 12, 2011, I served the:

Rebuttal by the County of Santa Barbara to the Department of Finance's letter to the Commission on State Mandates dated June 13, 2011 on the Post Election Manual Tally, 10-TC-08

by e-filing the documents to the Commission. Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is executed on this 12th day of July, 2011, at Santa Barbara, California.



Renee Bischof
Elections Division Manager
County of Santa Barbara
4440-A Calle Real
Santa Barbara, CA 93110
(805) 696-8957